Supreme Court, U.S.
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No. 89-1328

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

LOUISE W. GOODRICH,

Petitioner,

vs.

COUNTY OF LOS ANGELES,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT
DIVISION SEVEN

BRIEF OF RESPONDENT, COUNTY OF LOS ANGELES, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Summary of Reasons to Deny Petition:

1. This was an action for money damages only. In addition to correctly deciding the state issue, the court below correctly decided the two issues within this Court's jurisdiction: whether causes of action had been pleaded against County under 42 U.S.C. §1983 (deprivation of federal right by state action) and §1985 (conspiracy to do so).

2. The basic charging allegation against County was that its building inspector botched his inspection of the installation of Petitioner's manufactured home to her damage.

The National Manufactured Housing Construction and Safety

Standards Act of 1974, on which Petitioner relies exclusively, pertains only to the design and manufacture of manufactured homes. Congress clearly did not preempt local police power regulation and inspection of the installation of manufactured homes.

Also Congress did not establish in its 1974 statute a cause of action for damages or any right enforceable by a 42 U.S.C. §§1983-85 action for damages.

3. Since there was no pleading of a federal "right" there could be no cause of action stated for deprivation under §1983 or for conspiracy to deprive under §1985.

4. Even if deprivation of a federal "right" had been pleaded, there is another fatal pleading defect.

Petitioner admits in verified pleadings that her damage flowed from a County field inspector's negligent inspection and his mistaken use of the wrong form while the right form was available in his department.

She thus judicially admits that her damage was not caused by County policy set by the County Board of Supervisors or a County policy-maker, which is a fatal defect in trying to plead liability of County for damages under this Court's Monell and Pembaur cases.

Questions Presented:

Did Congress by the National Manufactured Housing Construction and Safety Standards Act of 1974 intend to preempt local building and safety laws for routine inspection of the installation of manufactured homes?

Assuming Congress did so intend, is an ordinary County building inspector, who negligently approves the installation of a manufactured home, against County procedures, a County "policy-maker" for purposes of liability of County under the Pembaur case of this Court? (Pembaur v. Cincinnati (1986) 436 U.S. 658, 98 S.Ct. 2018.)

Parties

Petitioner, Mrs. Goodrich, and Respondent, County, are the only parties to this Petition.

There were other defendants to the action, in addition to County, in the state trial court below.

The action in the trial court was dismissed only as to County, after several successful demurrers for failure to state a cause of action under state or federal authority, and the only parties to the state appeal were Petitioner and County.

Therefore, the only parties to this appeal are the Petitioner and Plaintiff and Appellant below, Louise W. Goodrich, and the Respondent,

County of Los Angeles, Defendant and Respondent below.

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Opinions Below:

The subject decision of the California Court of Appeal, Second Appellate District, Division 7, was "not to be published" under California appellate rules of court. Therefore, it has not been reported.

A copy of the appellate opinion is appended to the Petition as Appendix A, Volume 2.

The California Court of Appeal is an intermediate state appellate court; however, the California Supreme Court has denied Petitioner's Petitioner for Review, on November 21, 1989. Therefore, the subject California Court of Appeal decision is a final decision "by the highest court of a State in which a decision

could be had." (28 U.S.C. §1257.)

Jurisdiction:

If this Court grants this Petition, jurisdiction would be based on 28 U.S.C. §1257 (3) because Petitioner claimed a right under a federal statute in the trial court and on appeal.

This Petition should have been filed or mailed within 90 days of the date the California Supreme Court refused to grant a hearing. (28 U.S.C. §2101(c).)

Since the Order Denying Review was filed by the California Supreme Court on November 21, 1989 (see Petition, Appendix B, Volume 2) the last day for filing or mailing the Petition was February 19, 1990.

As to this Brief in Opposition, the Petition was received on February 28, 1990; therefore it must be filed or mailed by United States mail on or before March 30, 1990.

Pertinent Statutes:

Petitioner claims to have stated causes of action against County under 42 U.S.C. §§1983-85 for deprivation of rights secured by the National Manufactured Housing Construction and Safety Standards Act of 1974, ("the Federal Act") a federal statute. (42 U.S.C. §§5401-5426.)

STATEMENT OF THE CASE

County accepts the Statement of the Case at the trial and appellate levels in the subject opinion of the California Court of Appeal, Second

Appellate District, Division Seven, pages 1 through 26, found in the Petition, appendix A, pages 1a through 36A.

However, County disputes Petitioner's contention that she properly pleaded that County "policies" contrary to the Federal Act caused her damage.

She has factually alleged in verified complaints that her damage was caused by a negligent inspection of the installation of her manufactured home by a County inspector and his mistaken use of the "wrong" form when the "right" form was available in his department.

Mr. Severino Gaba, the County inspector, inspected the installation

of the manufactured home on Petitioner's property. (Clerk's Transcript, "C.T.", 7:27-9:1; 25:16-26:16.)

He missed serious defects. (C.T. 27:4.)

He signed the wrong form, "Final Inspection Approval and Certificate of Occupancy," rather than the right form, "HCD 413." (C.T. 8:19-9:1; 445:11-446:10.)

His signing of the wrong form after his negligent inspection caused the escrow to close on October 17, 1983, causing her to lose her $38,000.00 purchase price and causing her to become the owner of a defective manufactured home, which is the basic harm complained of. (C.T.

5:20-24; 6:14-25; 26:16-24.)

Petitioner admits that the right form, HCD 413, was available to Mr. Gaba in the County Building and Safety Department (C.T. 441:11-24); therefore, the damage complained of (loss of $38,000.00 and ownership of a defective manufactured home) was not due to a County policy but to an inspector's negligent inspection and his mistaken use of the wrong form.

ARGUMENT:

1. NO PLEADING OF DEPRIVATION OF A FEDERAL RIGHT.

To plead liability of County, under 42 U.S.C. §§1983-85, for the acts or omissions of its building inspector, Petitioner must first plead that she was denied a right secured by the Constitution or by a federal statute.

A deprivation under the U.S. Constitution has not been factually pleaded herein. In no reported case has the Federal Act, or a similar federal statute, been held to create rights, privileges, or immunities, which could give rise to federal constitutional deprivation under taking-or-damaging, due process, or

equal protection analysis.

Therefore, the deprivation alleged must be of a right secured by a federal statute rather than the United States Constitution.

In the trial court and appellate courts Petitioner claimed denial of rights under the National Manufactured Housing Construction and Safety Standards Act of 1974 ("the Federal Act").

This Court has held that 42 U.S.C. §§1983-85 ("§§1983-85") provides a remedy for deprivation under color of state law of rights conferred by federal statutory law unless Congress puts a judicial enforcement scheme in the statute itself or unless Congress did not

Opinions Below:

The subject decision of the California Court of Appeal, Second Appellate District, Division 7, was "not to be published" under California appellate rules of court. Therefore, it has not been reported.

A copy of the appellate opinion is appended to the Petition as Appendix A, Volume 2.

The California Court of Appeal is an intermediate state appellate court; however, the California Supreme Court has denied Petitioner's Petitioner for Review, on November 21, 1989. Therefore, the subject California Court of Appeal decision is a final decision "by the highest court of a State in which a decision

construed to give Petitioner a "right" under §§1983-85.

Since Petitioner did not plead a federal "right" she did not plead deprivation of a federal right, nor did she plead conspiracy to deprive her of a federal "right."

2. NO PREEMPTION OF LOCAL INSPECTION OF INSTALLATION BY THE FEDERAL ACT.

Manufactured homes are completely constructed offsite and are then brought onto the site and installed.

The purpose of the Federal Act was to establish construction and safety standards for manufactured homes (42 U.S.C. §5401), to protect against the risk of "accidents due to design or construction" (42 U.S.C.

§5402 (8)).

The Federal Act clearly was intended by Congress to preempt only state and local standards for construction or safety of manufactured homes in the design or manufacturing stages (42 U.S.C. §5403 (d)), not local regulation and inspection of <u>installation</u> of already designed and manufactured units.

No Federal or California case authority exists on this but the Supreme Court of Michigan has ruled that Congress did not intend the Federal Act to preempt local land use regulation (zoning), which is a local police power very closely related to the local police power in this case, regulation and inspection of building

or installing of structures. (Gackler Land Co., Inc. v. Yankee Springs Township (Supreme Ct. Mich. 1986) 398 N.W. 2d. 393, 400-01).)

3. NO ADEQUATE PLEADING OF COUNTY POLICY OR POLICY-MAKER

If deprivation of a federal right had been pleaded, Petitioner would also have to plead that the deprivation was caused by an official County policy set by an act of the Board of Supervisors or by the act of a high County policy-maker. (Pembaur v. Cincinnati (1986) 475 U.S. 469, 477 and note 5, 106 S.Ct. 1292, 1297 and note 5; Monell v. N.Y.C. Dept. of Soc. Serv. (1978) 436 U.S. 658, 690-95, 98 S.Ct. 2018, 2035-38.)

Petitioner admits in verified complaints that the damage complained of (loss of $38,000.00 and ownership of a defective manufactured home) was caused by the closing of the escrow,

which itself was caused by the negligent inspection by a lowly, field inspector and the signing by him of the wrong form, when the right form was available to him in his department. She cannot plead truthfully and factually that her damage was caused by official County policy, set by the Board or by a high County policy-maker.

Because of the admissions of the basic facts in Petitioner's verified complaints, contradictory conclusionary allegations, especially in subsequent amendments, could be disregarded by the state court on demurrer.

4. CONCLUSION

Since Congress in the Federal Act did not intend to create rights enforceable by §§ 1983-85 nor to preempt state or local regulation of the installation of manufactured homes, there has been no pleading of deprivation of a right secured by the Federal Constitution or federal laws.

Even if such a deprivation had been pleaded, still no cause of action could be pleaded against County, the inspector's employer. The verified pleadings admit that he was merely a field building inspector, not a policy-maker, and that he used the wrong form, while the right form was available in his department, thus contradicting County

this caused escrow to close irrevocably on or about October 17, 1983, long before the alleged meetings with higher County personnel.

No cause of action has been or can be pleaded under the Constitution or the Federal Act.

Wherefore, this Petition for Certiorari should be denied.

DATED: March 28, 1990

Respectfully submitted,

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COUNTY OF LOS ANGELES